HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI

Writ Petition No.489 of 2001

Between:

Posimsetty Narayana Rao

... Petitioner

And

A.P. Co-op. Tribunal,
Vijayawada & others

... Respondents

:: O R D E R ::

Counsel for the petitioner : Shri M. Rama Mohan for
Shri M.S.R. Subrahmanyam

Counsel for the respondents : Government Pleader for
Cooperation

July 18, 2007

This is a petition for quashing order dated 07.07.2000 vide which the Andhra Pradesh Cooperative Tribunal, Vijayawada (for short, 'the Tribunal') dismissed the appeal filed by the petitioner's father late Shri P. Raghava Rao and confirmed the surcharge order dated 05.10.1988 passed by Deputy Registrar of Cooperative Societies, Eluru (non-petitioner No.2 herein) under Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act').

The petitioner's father was President of Adavikolanu Large Sized Co-operative Society (hereinafter referred to as 'the society'). In November-December 1983, he effected credit sale of rice worth Rs.64,441/- to Ammakkannammal of Madras through Chakravarthi Agencies, Gudivada without executing any agreement and without obtaining security for payment of the price. The society could recover

only two-third of the price. On coming to know of the fact that the transaction involving credit sale of rice to Ammakkannammal has caused loss of Rs.22,641/- to the society, non-petitioner No.2 got an enquiry conducted under Section 52 of the Act. The Inspecting Officer submitted report dated 31.03.1988 with the finding that the credit sale of rice was ex facie irregular and, on that account, the society had suffered loss of Rs.22,641/-. On receipt of the inspection report, respondent No.2 issued notice to Shri P. Raghava Rao and also to Shri P. Raja Rao, Ex-Secretary of the society to show cause as to why Rs.22,641/- may not be recovered from them with interest at the rate of 18% per annum with effect from 30th January, 1985. At the request of Shri P. Raghava Rao, the time specified in the notice for submission of reply was extended, but he failed to do the needful. Another notice issued to him met with the same fate. He finally submitted explanation on 29.7.1988. Shri P. Raja Rao submitted explanation on 12.5.1988. After considering their explanations and the record placed before him, respondent No.2 passed order dated 5.10.1988, whereby he directed the noticees to deposit Rs.24,641/- with interest amounting to Rs.15,010.80 and also pay future interest at the rate of 18% till the date of realisation.

Shri P. Raghava Rao challenged the abovementioned order by filing an appeal under Section 76 of the Act. During the pendency of the appeal, Shri P. Raghava Rao died and the petitioner was brought on record as his legal representative. After hearing the petitioner, the Tribunal, vide its order dated 7.7.2000, dismissed the appeal.

Sri M. Ramamohan, learned counsel for the petitioner argued that the order impugned in the writ petition is liable to be set aside because copy of the enquiry report prepared under Section 52 of the Act was not supplied to late Shri P. Raghava Rao and, on that account, he could not effectively put-forward his defence. Learned counsel submitted that the requirement of supplying adverse material, which is sought to be used against a person for creating fiscal or other

liability against him is an integral part of the rules of natural justice and failure of respondent No.2 to make available copy of report dated 31.3.1988 to late Shri P. Ragahva Rao should be treated as sufficient for invalidation of order dated 5.10.1988. Sri Ramamohan then argued that the appellate order is also liable to be quashed because while dismissing the appeal, the Tribunal overlooked the gross violation of the rules of natural justice in passing of order dated 5.10.1988. On merits, the learned counsel argued that late Shri P. Raghava Rao could not have been held liable for the alleged loss caused to the society because the transaction involving credit sale of rice to Ammakkannammal of Madras was not tainted by mala fides or ulterior motive and the Board of Directors of the society had ratified the same. Learned counsel further argued that the action taken by respondent No.2 does not fall within the ambit of Section 60 of the Act, inasmuch, as there is no material on record to show that late Shri P. Raghava Rao had wilfully neglected to perform his duty in the matter of recovery of the amount due from Ammakkannammal.

Learned Government Pleader for Co-operation supported the order passed by respondent No.2 and argued that the direction given to late Shri P. Raghava Rao and Ex-Secretary of the society to deposit an amount equivalent to loss suffered by the society is in consonance with Section 60 of the Act.

I have considered the respective submissions and scrutinised the record. The argument of Shri M. Ramamohan that non-supply of enquiry report dated 31.3.1988 prepared on the basis of inspection carried out under Section 52 of the Act appears attractive, but lacks merit and is liable to be rejected because the petitioner has neither pleaded nor the learned counsel could show that Shri P. Raghava Rao had, neither in the explanation dated 29.7.1988 submitted by him in response to the show cause notice nor at any stage thereafter, made a grievance regarding non-supply of the copy of enquiry report and consequential prejudice to his cause. The copy of explanation

filed by Shri P. Raghava Rao has not even been placed on the record of this petition to prima facie prove that he had made a complaint or grievance regarding non-supply of the copy of enquiry report. Therefore, at this stage, it is not possible to entertain the academic argument made by the learned counsel for the petitioner that order dated 5.10.1988 is vitiated due to violation of the rules of natural justice.

The theory of prejudice or empty formality, which was rejected in the sixties, seventies and eighties, is now firmly recognised and is being applied by the courts for negating the plea of violation of the rules of natural justice unless it is pleaded and proved that such violation has resulted in prejudice to the cause of the complaining person. In recent decisions, the Supreme Court has consistently held that mere violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[1], **R.C.Sharma v. Union of India**[2], **Sunil Kumar Banerjee v. State of West Bengal**[3], **K.N. Tripathi v. State Bank of India**[4], **Mumtaz Hussein Ansari v. State of U.P.**[5], **Kashinath Dikshita v. Union of India**[6], **Chandrama Tiwari v. Union of India**[7], **Managing Director, ECIL v. B. Karunakar**[8], **Krishanlal v. State of Jammu and Kashmir**[9], **State Bank of Patiala v. S.K. Sharma**[10], **S.K. Singh v. Central Bank of India**[11], **State of Uttar Pradesh v. Shatrughanlal**[12], **Food Corporation of India v. Padamkumar Bhuvan**[13], **State of Uttar Pradesh v. Harendra Arora**[14], **Oriental Insurance Company v. S. Balakrishnan**[15], **State of Uttar Pradesh**

v. Rameshchand Manglik[16], **Canara Bank v. Debasis Das**[17], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[18] and **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[19].

In **B. Karunakar's** case (supra), the Constitution Bench considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[20] and **K.C. Asthana v. State of Uttar Pradesh**[21] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). In the course of judgment, their Lordships of the Supreme Court framed the main question whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Supreme Court also framed the following incidental questions:

> " i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?
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> ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?
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> iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?
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> iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?
>
> v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?
>
> vi) From what date the law requiring furnishing of the report, should come into operation?

vii) Since the decision in **Ramzan Khan's** case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?"

After answering the basic question in the affirmative, their Lordships considered the ancillary questions and answered question No.(v) in the following words:

"The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing

the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case** (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

"i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable

to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

"It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra), the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar's** case (supra) and observed that the principles of natural justice cannot be put in a straightjacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

In view of the above discussion, I hold that the surcharge order

cannot be nullified on the ground of violation of the rules of natural justice.

Equally meritless is the argument of the learned counsel that the present case does not fall within the ambit of Section 60 of the Act. Sub-section (1) of Section 60, which empowers the Registrar or the person authorised by him to pass an order for restoration of money etc. belonging to the society, reads as under:

> "**60. Surcharge:-**
>
> (1) Where in the course of an audit under Section 50 or any inquiry under Section 51 or an inspection under Section 52 or Section 53 or the winding up of a society it appears that any person who is or was entrusted with the organisation, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fradulently retained any money or other property or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or willful negligence as the Registrar or the person authorised as aforesaid thinks just:
>
> Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.
>
> (2) Any sum ordered under this Section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.
>
> (3) This Section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act."

An analysis of the above reproduced provision makes it clear that any person, who is or was entrusted with the organisation, affairs or management of the society or any past or present servant of the

society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence etc., can be made liable to reimburse the society in the form of money or property. This section is intended to ensure that neither any office bearer nor any officer or servant of the society is able to fritter away its money or property. In terms of this section, the competent authority can, after giving opportunity of making representation to the concerned person, order restoration of money or property to the society.

In the light of the above, it is to be seen whether the order passed by respondent No.2 requiring late Shri P. Raghava Rao and Shri P. Raja Rao to repay the amount of Rs.24,641/- in lieu of the loss caused to the society, falls within the ambit of Section 60 (1). A reading of that order shows that the officer concerned had complied with the rules of natural justice in their totality and assigned cogent reasons for holding late Shri P. Raghava Rao and Shri P. Raja Rao responsible for the loss caused to the society. This is evinced from the following extracts of order dated 5.10.1988:

> "The Society undertook procurement of paddy business as per the Board Resolution No.113, dt.16.4.1983. The procured paddy was processed by the Society and rice and by products were sold to the Government Civil Supplies Corporation and private parties of Tamilnadu. The President took a decision to sell rice to a private trader of Tamilnadu, namely M/s. Anna Kannammal, Madras through M/s. Chakravarthi Agencies, Gudivada. It is to be noted that no agreement was reached and no sureties are insisted upon by the President. The decision to make credit sale with a private party was taken without any valid legally binding agreement and necessary sureties. As a result, out of stock supplied worth of Rs.64,441.00, an amount of Rs.22,841-00 is still due from M/s. Anna Kannammal to the Society and there is no way to recover the amount from the party.
>
> The agreement of the ex.Prsident Sri P. Raghava Rao is that the decision was ratified by the Board of Management is preposterous on two grounds. First, the bye-laws of the Society does not permit any credit sale let alone, without any agreement and sureties. Second, the supply of rice has taken place between 29.11.1983 and

1.12.1983 but they were ratified by the Board on 24.12.1983 vide resolution No.218. It shows that the President is alone responsible for the transaction and he got ratification of the Board just to evade the liability. The Board also acted beyond its powers by ratifying an act which is not permitted by the bye-laws.

The argument of Sri P. Raja Rao, the ex. Secretary that he is not responsible as the decision was taken by the President and ratified by the Board is also not tenable. As the Chief Executive of the Society, he is expected to enlighten the President and Board members not to undertake credit sales which is in contravention of bye-laws. At least, he should have insisted on a valid agreement and sureties before supplying the stock on credit basis. It is his duty to object to the transaction and intimate immediately to the financing bank and Co-operative Department. He failed to do so. He states that he informed the financing bank in his letters dt.5.1.1984, 16.7.1984, 25.8.1984, 4.1.1985 and 16.1.1985 about the transaction but could not get any direction. He did not produce any recorded evidence in support of his averment. When the transaction took place between 29.11.1983 and 1.12.1983, there is no reason why he took so much of time to inform the financing bank. He also failed to intimate the fact to the Deputy Registrar of Co-op.Societies, Eluru who is vested with powers under Andhra Pradesh Co-op.Societies Act for taking necessary action in the matter.

In view of my above findings, I hold that both Sri P. Raghava Rao, the ex. President and Sri P. Raja Rao, the ex. Secretary of Adavikolanu Large Sized Co-op. Society, Adavikolanu be made responsible jointly and severally to make good the amount of Rs.22,641-00 lost by the Advavikolanu Large Sized Co-op.Society, Adavikolanu."

The Tribunal independently considered the matter and concluded that the Ex-President and Ex-Secretary of the society were responsible for the loss caused to the society. The reasons assigned by the Tribunal for upholding the order of respondent No.2 read as under:

"From the above referred facts, admittedly, there is no dispute that the deceased appellant was Ex-President of Adavikolanu Large Sized Co-operative Society, Adavikolanu. Since there were certain irregularities committed by the managing committee and staff of the Adavikolanu Large Sized Co-operative Society, the Deputy Registrar of Co-operative Societies initiated proceedings vide Rc.No.115/88-C dated 7.2.1988, and appointed one Sri P. Bhogalingam, the Cooperative Sub-Registrar, Eluru to conduct

inspection of the said society as per Section 52 as contemplated under the Act, who has submitted his report dated 31.3.1988 stating that the deceased P. Raghava Rao, Ex. President and P. Raja Rao, 2nd respondent herein, who is Ex. Secretary of the Society, were responsible for a sum of RS.22,641-00 towards loss caused to the society. Basing on the report, the Deputy Registrar of Co-operative Societies issued notice to the deceased appellant and 2nd respondent herein dated 12.4.1988 under Section 60(1) of the Act and fixed up the responsibility for payment of Rs.22,641-00 with interest at 18% p.a. and called for explanation if any within 7 days. Material is available to prove that the said notice was issued on 12.4.1988 and acknowledged by the deceased appellant and the 2nd respondent herein on 25.4.1988 and 28.4.1988 respectively. The lower court record also shows that the deceased appellant by his letter dated 11.5.1988 requested for extension of time till 21.5.1988 to submit his explanation, but he failed to submit his explanation. Again, another notice dated 16.6.1988 was issued to him to submit his explanation on or before 26.6.1988, but it seems again he sought for extension of time till 26.8.1988 by this letter dated 5.7.1988. Finally, he submitted his reply on 29.7.1988. As per the inspection report, with regard to credit sales of rice, the deceased appellant took decision to sell the stock of rice to Sri Annakannammal, a private trader in Madras on credit basis through Chakravarthi Agencies, Gudivada. There is no written undertaking either from Chakravarthi Agencies or Annakannammal for supply of rice and also there is no acknowledgement from the party in token of having received the loads of rice worth of Rs.64,441-00 and the said rice was sold to them without any agreement and sureties. The society could recover only part of amount of Rs.64,441-00 leaving the balance amount of Rs.22,641-00. The enquiry officer after considering the concerned record gave a categorical finding that the ratification of Board for taking decision by the President is illegal and President, Board of Directors along with Secretary are responsible for recovery of an amount of Rs.22,641-00. It seems, in the explanation, the appellant tried to defend his action, saying the decision taken by him was ratified by the Board of Management, and as such he cannot be held responsible. The lower authority after considering the explanation of the Ex. President and the 2nd respondent herein, categorically gave a finding that the then President took a decision to sell rice to private traders at Madras without any mortgage and demand of any sureties. The bye-laws of the society do not permit any credit sales let alone without any agreement and sureties. And it also further observed that the President was alone responsible for the transaction and he got ratification of the Board just to evade the liability and the Board also acted beyond its powers by ratifying an act of the President which is

not permitted under the bye-laws of the society and rejected the case of the appellant herein that his action is illegal. The entire material brought before us clinchingly proves that the appellant herein was given reasonable opportunity to put up his defence before the learned lower authority. It is evident that number of extension letters given by the appellant to submit his explanation itself clearly proves from the beginning the deceased appellant used dilatory tactics and taken a false plea that he was not given a reasonable opportunity which shows that he was guilty of the charge and he has not approached this Court with clean hands. The learned lower authority verified the entire material and after considering the explanation of the deceased appellant which are self explanatory, passed the surcharge order fixing up the responsibility against the deceased appellant, which is a correct decision."

In my considered view, neither of the above referred orders suffers from any error apparent, which may justify interference under Article 226 of the Constitution of India. Therefore, keeping in view the guidelines laid down by the Supreme Court for exercise of the High Court's power of judicial review, I have no hesitation to reject the petitioner's challenge to order dated 7.7.2000 passed by the Tribunal.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.571 of 2001 filed by the petitioner for interim relief and WVMP.No.1882 of 2002 filed by respondent No.2 for vacating the interim order are disposed of as infructuous.

G.S. SINGHVI, CJ

July 18, 2007

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[1] **(1969) 3 SCC 392**

[2] **(1976) 3 SCC 574**

[3] **(1980) 3 SCC 304**

[4] **(1984) 1 SCC 43**

[5] (1984) 3 SCC 295

[6] (1986) 3 SCC 229

[7] (1987) Suppl. SCC 518

[8] (1993) 4 SCC 727

[9] (1994) 4 SCC 422

[10] AIR 1996 SC 1669

[11] (1996) 6 SCC 415

[12] (1998) 6 SCC 651

[13] (1999) SCC (L&S) 620

[14] (2001) 6 SCC 392

[15] (2003) 11 SCC 734

[16] (2003) 3 SCC 443

[17] (2003) 4 SCC 557

[18] (2004) 1 SCC 281

[19] (2005) 2 SCC 237

[20] (1991) 1 SCC 588

[21] (1988) 3 SCC 600